



2300 Lake Elmo Drive
Billings, MT 59105

Date

TO: Environmental Quality Council
Director's Office, Dept. of Environmental Quality
Montana Fish, Wildlife & Parks

Director's Office
Parks Division
Fisheries Division
Wildlife Division

Lands Section
Design & Construction
Legal Unit
Regional Supervisors

Montana Historical Society, State Preservation Office
Janet Ellis, Montana Audubon Council
Montana Wildlife Federation
Montana State Library
George Ochenski
Montana Environmental Information Center
Montana Parks Association (land acquisition projects)
Don Kendall, DNRC Area Manager, Southern Land Office
Jim Kraft, Yellowstone County GSA

Ladies and Gentlemen:

The enclosed draft Environmental Assessment (EA) has been prepared for the repair, reinforcement, and realignment of the middle of three bendway weirs originally constructed in the Yellowstone River near Huntley during 1998, and is submitted for your consideration.

Questions and comments will be accepted until October 25, 2001

If you have questions or need additional copies of the draft EA, please contact Montana Fish, Wildlife & Parks at 247-2940. All comments may be sent to the undersigned.

Thank you for your interest.

Sincerely,

Harvey E. Nyberg
Regional Supervisor

Enclosure

Yellowstone

DEPARTMENT OF FISH, WILDLIFE AND PARKS

2300 Lake Elmo Drive, Billings, MT 59105

(406) 247-2940

ENVIRONMENTAL ASSESSMENT

Project Title Huntley Bendway Weir Repair

Division/Bureau Fisheries/Management

Program Fisheries

Description of Project The middle of three bendway weirs constructed in the Yellowstone River near Huntley during 1998 will be repaired, reinforced, and slightly realigned. A riprap remnant across the channel that has been deflecting flows into this weir will be removed. (Detailed description of Special Provisions attached.)

POTENTIAL IMPACT ON PHYSICAL ENVIRONMENT

	MAJOR	MODERATE	MINOR	NONE	UNKNOWN	COMMENTS ON ATTACHED PAGES
1. Terrestrial & aquatic life and habitats			x			I-1.
2. Water quality, quantity & distribution			x			I-2.
3. Geology & soil quality, stability & moisture				x		
4. Vegetation cover, quantity & quality			x			I-4.
5. Aesthetics			x			I-5.
6. Air quality				x		
7. Unique, endangered, fragile, or limited environmental resources				x		
8. Demands on environmental resources of land, water, air & energy				x		

	MAJOR	MODERATE	MINOR	NONE	UNKNOWN	COMMENTS ON ATTACHED PAGES
9. Historical & archaeological sites				X		

POTENTIAL IMPACTS ON HUMAN ENVIRONMENT

	MAJOR	MODERATE	MINOR	NONE	UNKNOWN	COMMENTS ON ATTACHED PAGES
1. Social structures & mores				X		
2. Cultural uniqueness & diversity				X		
3. Local & state tax base & tax revenue				X		
4. Agricultural or industrial production				X		
5. Human health				X		
6. Quantity & distribution of community & personal income				X		
7. Access to & quality of recreational and wilderness activities				X		
8. Quantity & distribution of employment				X		
9. Distribution & density of population & housing				X		
10. Demands for government services				X		
11. Industrial & commercial activity				X		
12. Demands for energy				X		

	MAJOR	MODERATE	MINOR	NONE	UNKNOWN	COMMENTS ON ATTACHED PAGES
13. Locally adopted environmental plans & goals				x		
14. Transportation networks & traffic flows				x		

Other groups or agencies contacted or which may have overlapping jurisdiction U.S. Army Corps of Engineers, Montana Dept of Environmental Quality

Individuals or groups contributing to this EA: Natural Resources Conservation Service

Recommendation concerning preparation of EIS : None required

EA prepared by : Jim Darling

Date: October 11, 2001

COMMENTS

Section I

1. Removing the remnant rock across channel and placing riprap at the base of the second weir will disturb aquatic invertebrates and their habitat. The area will be recolonized following construction. Any fish in the vicinity will likely leave the area during construction.
2. Minor increases in turbidity would be expected during the three day construction period.
4. Vegetation on the bank near the weir will be disturbed during construction. All disturbed topsoil will be stockpiled and replaced. Seeding will be according to NRCS specifications.
5. During construction, a backhoe/trackhoe will be working in and around the Yellowstone River, which may temporarily detract from some recreationists' enjoyment.

SPECIAL PROVISIONS
for

(MT-ENG-7A)

Land User:	Town of Huntley
Job Description:	Bendway Weir Rehabilitation
Location:	West of Huntley, MT (Sec 25, T2N, R27E)
County:	Yellowstone

ITEMS OF WORK AND CONSTRUCTION DETAILS

The project is comprised of supply and installation of additional rock to bendway weir number 2, removal of remnant rip rap rock from the river downstream, re-installing of the fence and seeding disturbed areas.

Items of work to be performed in conformance with this special provision and the construction details thereof are:

1. All construction shall be in accordance with Construction Specifications MT-100, MT-101, MT-102.
2. All work shall follow the safety requirements of OSHA Safety and Health Standards, Part 1926, Safety and Health Regulations for Construction.
3. All areas of ingress and egress will be returned to original condition unless other arrangements are made with the landowner.
4. NRCS will set construction stakes for excavation limits and the angle of rock placement on the bendway weir.
5. Bid Item 1. Mobilization
 - (1) This item shall consist of mobilization and demobilization of the contractor's forces and equipment required for the completion of the work.
 - (2) Transportation of any materials incorporate into the permanent works shall not be considered a mobilization item.
 - (3) This item shall include salvaging existing fence materials removed in providing access to bendway weir two, and furnishing additional fencing materials to restore about 250 feet of fence from an area beginning about 25 feet upstream of bendway weir two to 60 feet upstream of bendway weir three. The fence materials and installation shall meet the requirements set forth in MT-382A, Standard Wire Fencing.
 - (4) Payment shall be in a lump sum price.

6. Bid Item 2. Excavation and Seeding of Disturbed Areas

- (1) Key excavation shall begin next to the existing key and be dug to the limits and dimensions shown on the drawings (construction limits will be located by NRCS).
- (2) All excavated material may be spread in areas approved by Yellowstone County before rock placement begins.
- (3) All disturbed topsoil will be stockpiled and replaced on disturbed areas for grass seeding.
- (4) The disturbed areas, shall be seeded. All seeding shall meet the requirements set forth in MT-322-A Channel Vegetation, Broadcast Seeding.
- (5) Measurement shall not be made for excavation and seeding elements in bid item 2. Payment shall be in a lump sum price.

7. Bid Item 3. Bend-way Weir Construction

- (1) This item shall consist of furnishing and installing all rock, including the excavation and shaping as necessary as shown in the design drawings.
- (2) The estimated quantity of rock to be added to weir number two is 55 cubic yards. The rock shall have a nominal size of 21 inches and shall be graded as follows:

<u>Size</u>	<u>Percent Passing</u>
42"	100%
21"	50-85%
14"	35-50%
7"	10-35%

- (3) The weir key excavation shall be to the seven foot minimum depth of as shown on the drawings, into the native river cobble-gravel in the bank.
- (4) When rock source is located, NRCS will inspect the rock to determine suitability.
- (5) Rock, rock placement and earth excavation shall be in accordance with Montana Construction Specifications MT-104 and MT-107.
- (6) Measurement and Payment for the rock shall be by the cubic yard. Estimated rock volume is 75 cubic yards. Dimensions and limits are as shown on the drawings.

8. Bid Item 4. Removal of Remnant Rock Rip Rap

- (1) This item shall consist of the removal and disposal of the exposed and submerged rock in the river downstream approximately 50 feet and 80 feet out from the weir. The volume of rock to be removed is estimated to be 50 cubic yards. The rock is to be removed to an approximate river bottom elevation of 83.0.
- (2) Removed rock materials will be disposed at sites approved by Yellowstone County.
- (3) Payment for this item will be made in a lump sum price.

APPENDIX A
PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST

The 54th Legislature enacted the Private Property Assessment Act, Chapter 462, Laws of Montana (1995). The intent of the legislation is to establish an orderly and consistent process by which state agencies evaluate their proposed actions under the "Takings Clauses" of the United States and Montana Constitutions. The Takings Clause of the Fifth Amendment of the United States Constitution provides: "nor shall private property be taken for public use, without just compensation." Similarly, Article II, Section 29 of the Montana Constitution provides: "Private property shall not be taken or damaged for public use without just compensation..."

The Private Property Assessment Act applies to proposed agency actions pertaining to land or water management or to some other environmental matter that, if adopted and enforced without compensation, would constitute a deprivation of private property in violation of the United States or Montana Constitutions.

The Montana State Attorney General's Office has developed guidelines for use by state agency to assess the impact of a proposed agency action on private property. The assessment process includes a careful review of all issues identified in the Attorney General's guidance document (Montana Department of Justice 1997). If the use of the guidelines and checklist indicates that a proposed agency action has taking or damaging implications, the agency must prepare an impact assessment in accordance with Section 5 of the Private Property Assessment Act. For the purposes of this EA, the questions on the following checklist refer to the following required stipulation(s):

(List any mitigation/stipulations required, or note "None".)

**DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS IMPLICATIONS
UNDER THE PRIVATE PROPERTY ASSESSMENT ACT?**

YES

NO

 X

1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?

 X

2. Does the action result in either a permanent or indefinite physical occupation of private property?

 X

3. Does the action deprive the owner of all economically viable uses of the property?

 X

4. Does the action deny a fundamental attribute of ownership?

 X

5. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If the answer is **NO**, skip questions 5a and 5b and continue with question 6.]

5a. Is there a reasonable, specific connection between the government requirement and legitimate state interests?

5b. Is the government requirement roughly proportional to the impact of the proposed use of the property?

 X

6. Does the action have a severe impact on the value of the property?

 X

7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally? [If the answer is **NO**, do not answer questions 7a-7c.]

7a. Is the impact of government action direct, peculiar, and significant?

7b. Has government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?

7c. Has government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?

Taking or damaging implications exist if **YES** is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if **NO** is checked in response to questions 5a or 5b.

If taking or damaging implications exist, the agency must comply with Section 5 of the Private Property Assessment Act, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.